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Office Supreme Court U. S.
FILED
MAR 16 1903
JAMES H. McKENNEY,
Clerk.

In the Supreme Court of the United States.

OCTOBER TERM, 1902.

THE UNITED STATES EX REL. RIVERSIDE Oil Company, plaintiff in error,
v.
ETHAN A. HITCHCOCK, SECRETARY OF the Interior.
} No. 632.

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

MOTION TO ADVANCE.

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This is a writ of error to review a judgment of the court of appeals of the District of Columbia affirming a judgment of the supreme court of the District of Columbia dismissing a petition for a writ of mandamus to require the Secretary of the Interior to reinstate and pass to patent certain selections of lands under the Forest Reserve Lieu Selection provision of the act of June 4, 1897 (30 Stat., 36), which the Secretary of the Interior had rejected for causes stated in his decisions of April 25, 1901, and April 12, 1902, on review.

The two principal questions presented by the record are:

First. Whether, in the absence of any action of the Land Department divesting the legal title of the

United States to the land in question, the courts of the District of Columbia have the power to review the decision of the Secretary of the Interior by the writ of mandamus.

Second. Whether, if such power to review exists, the action of the Secretary in this instance is subject to review and control by the writ of mandamus.

The second question involves an inquiry into the meaning and application of the act of June 4, *supra*, and the authority of the Land Department to require proofs of the condition and character of the land sought to be selected as an essential element of a selection under the act, and to hold that until such proof is made the selector has not brought himself within the operation of the act.

The matters thus embraced within this second question, it is understood, are partly involved and will be argued in cases numbers 217 and 218 on the docket for the present term, which are controversies between certain selectors under the said act of 1897, and mineral claimants in possession of the land sought to be selected, to which controversies neither the United States nor the Secretary of the Interior is a party.

These questions are of great public interest, and as the construction and ruling of the Land Department complained of are an expression of the present settled policy of the Department with respect to the administration of the act of 1897, and many cases have already been disposed of in accordance with such ruling and many others are now pending, it is important that the

question of the power of the courts of the District of Columbia to interfere with such ruling by the writ of mandamus shall be speedily and definitely determined, so that the future administration of this act may not be subject to doubt or uncertainty.

With the concurrence and at the request of counsel for the plaintiff in error, I therefore submit a motion to advance this case for hearing at this term. And inasmuch as a part of the inquiry here presented is involved in cases numbers 217 and 218, I respectfully submit that this case be set *not to be heard with such cases, but to follow them* in such wise that counsel for the Secretary of the Interior may be heard upon the question of the power of the courts, by the writ of mandamus to control his action in the administration of the act of 1897, and in such a proceeding to overturn the practice and rulings of the Department. It is believed that it will be helpful to the court and save time and labor to have this case and the other two under consideration at the same time.

HENRY M. HOYT,
Solicitor-General.